

Tab 1 BKK Ex. 1

B 10 (Official Form 10) (12/08 Modified CEM)

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM
In re Chemtura Corporation, et al., Case No. 09-11233 (REG) (Jointly Administered)		
Name of Debtor Uniroyal Chemical Company Limited (Delaware)		Case Number: 09-11258 (REG)
NOTE: This form should not be used to make a claim for administrative expenses arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503(a).		
Name of Creditor (the person or other entity to whom the debtor owes money or property): California Department of Toxic Substances Control P.O. Box 806 Sacramento, CA 95812-0806		<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: 10/30/09
If address and name different from above, please provide the name and address where notices should be sent: Creditor Name: Thomas G. Heller, Deputy Attorney General Address: California Dept. of Justice, 300 S. Spring St. #1702 City/State/ZIP Los Angeles/CA/90013 Attorney for Creditor		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ See attached statement (Unsecured) \$ _____ (Secured) \$ _____ (Priority) \$ _____ (Total) \$ _____		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a) or 11 U.S.C. § 503(b)(9). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtors business, whichever is earlier — 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan — 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units — 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). Amount entitled to priority: \$ _____
2. Basis for Claim: Environmental Response Costs (see attached supplemental statement) (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____		
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate ____% Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____		
Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. If the supporting documents are in excess of 100 pages, you may attach a summary of them and a list of each document you have relied upon. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.		

Date:
10/30/09

Signature: the person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above.
Attach copy of power of attorney, if any.

Thomas G. Heller, Deputy Attorney General

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. **KURTZMAN CARSON CONSULTANTS**

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15 IN THE UNITED STATES BANKRUPTCY COURT
16 FOR THE SOUTHERN DISTRICT OF NEW YORK

17 **In re:**

18 **UNIROYAL CHEMICAL COMPANY
19 LIMITED (DELAWARE),**

20 Debtor,

21 CASE NO. 09-11258 (REG)

22 Chapter 11

23 **SUPPLEMENTAL STATEMENT OF
24 THE CALIFORNIA DEPARTMENT OF
25 TOXIC SUBSTANCES CONTROL IN
SUPPORT OF PROOF OF CLAIM
(AMENDED)**

26 Judge Honorable Judge Robert E.
27 Gerber

28 **INTRODUCTION**

29 The California Department of Toxic Substances Control (“DTSC”), by and through its
30 attorney, the Office of the California Attorney General, by Thomas G. Heller, Deputy Attorney
31 General, submits this supplemental statement in support of its Proof of Claim (amended) in the
32 bankruptcy proceeding of Debtor, Uniroyal Chemical Company Limited (Delaware) (“Debtor”).

33 DTSC files this proof of claim to protect its rights to recover environmental response costs
34 in connection with the cleanup of contaminated property and groundwater, at and from a southern

1 California site known as the “BKK Site.” Debtor is liable under applicable environmental laws
2 for the environmental cleanup of the Site.

3 During the bankruptcy proceedings, a debtor in possession is required to comply with all
4 valid state and federal environmental laws. 28 U.S.C. § 959(b). Thus, DTSC asserts that by
5 filing this proof of claim, it does not waive its right to take enforcement action against Debtor to
6 ensure compliance with the requirements of environmental laws, regulations, and orders within
7 DTSC’s jurisdiction, consistent with the provisions of 11 U.S.C. section 362(b)(4).

8 Based on information presently known to it, DTSC submits a claim for environmental
9 response costs in an unliquidated amount for the BKK Site. DTSC expressly reserves its rights
10 to amend this claim. Nothing in this proof of claim constitutes a waiver of any rights of DTSC or
11 an election of remedies by DTSC.¹

12 This proof of claim amends DTSC’s original proof of claim, filed earlier on this same date,
13 to correct a typographical error in first paragraph of the original supplemental statement as to the
14 identity of the Debtor.

15 BACKGROUND

16 I. THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (“DTSC”)

17 DTSC is a California state government agency. DTSC regulates all aspects of hazardous
18 waste management in California, and enforces laws related to the cleanup of hazardous
19 substances in California.

20 II. DEBTOR’S LIABILITY TO DTSC UNDER THE HSAA AND CERCLA

21 The laws that DTSC enforces include California’s Hazardous Substances Account Act (the
22 “HSAA”), Cal. Health and Safety Code §§ 25300 et seq. The HSAA establishes a comprehensive

23
24 ¹ Further, by filing this claim, DTSC does not waive its sovereign immunity, except as
otherwise provided by law. DTSC makes this claim for itself and no other agency, unit or entity
25 of the State of California. Any waiver of sovereign immunity under the law resulting from the
filing of this claim is by DTSC, and no other agency, unit or entity of the State of California, and
26 is strictly limited to this claim. Further, the filing of this claim shall not be deemed or construed
as a waiver of any objections or defenses that DTSC or any other agency, unit or entity of the
State of California may have to this Court’s jurisdiction over DTSC or such other agency, unit or
27 entity based upon the Eleventh Amendment or related principles of sovereign immunity or
otherwise, all of which are hereby preserved.
28

1 program for the cleanup of hazardous substances that have been released, or are threatened to be
2 released, into the environment. Under the HSAA, DTSC may seek recovery of response costs it
3 incurs in connection with such cleanup activities. The HSAA directs DTSC to recover any costs
4 it incurs in connection with such clean up activities from the liable parties. Cal. Health & Safety
5 Code § 25360.

6 Under California Health and Safety Code section 25323.5, liable parties are those parties
7 described in section 107 of the federal Superfund statute, the Comprehensive Environmental
8 Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9607. CERCLA section
9 107(a), 42 U.S.C. § 9607(a), makes the following persons liable for all costs of removal or
10 remedial action incurred by DTSC:

- 11 (1) the owner and operator of a vessel or a facility;
- 12 (2) any person who at the time of disposal of any hazardous substances owned or
13 operated any facility at which such hazardous substances were disposed of;
- 14 (3) any person who by contract, agreement, or otherwise arranged for disposal or
15 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
16 substances owned or possessed by such person, by any other party or entity, at any facility or
17 incineration vessel owned or operated by another party or entity and containing such hazardous
18 substances; and
- 19 (4) any person who accepts or accepted any hazardous substances for transport to
20 disposal or treatment facilities, incineration vessels or sites selected by such person, from which
21 there is a release, or a threatened release which causes the incurrence of response costs, of a
22 hazardous substance.

23 In addition to its authority under the HSAA, DTSC may also bring a cost recovery action
24 against liable parties directly under CERCLA. *See* 42 U.S.C. § 9607(a). Under CERCLA, DTSC
25 may recover from liable parties all response costs, including interest, incurred by DTSC in
26 investigating, overseeing and cleaning up sites with releases or threatened releases of hazardous
27 substances. 42 U.S.C. § 9607(a). Under CERCLA and the HSAA, recoverable response costs

1 include, *inter alia*, direct costs, indirect costs, administrative costs, and oversight costs incurred
2 by DTSC in conducting and/or overseeing an environmental cleanup.

3 **III. DTSC'S CLAIM FOR THE BKK SITE**

4 DTSC's claim against Debtor as to the BKK Site is for environmental response costs in an
5 unliquidated amount. DTSC presently has insufficient information regarding Debtor's liability
6 regarding this Site to estimate the amount of DTSC's claim against Debtor. DTSC reserves its
7 right to amend this proof of claim when additional information about the Site becomes available.

8 The BKK Site is approximately 583 acres located at 2210 South Azusa Avenue, West
9 Covina, California. The BKK Site contains a closed hazardous waste "Class I Landfill" (i.e. a
10 hazardous waste landfill), a closed "Class III Landfill" (i.e. a municipal solid waste landfill), and
11 related facilities including a leachate treatment plant and gas and leachate collection systems.
12 The Class I Landfill is approximately 190 acres and accepted waste from roughly 1962 to 1987.
13 The Site is named after the BKK Corporation, which is the owner and operator of the Class I and
14 Class III Landfills.

15 More than four million tons of liquid and solid hazardous wastes, and a much larger volume
16 of nonhazardous solid waste (trash), were disposed of at the Class I Landfill. The types of
17 hazardous wastes that were disposed of in the greatest quantities at the BKK Class I Landfill
18 included acid solutions, alkaline solutions, contaminated soil and sand, drilling muds, oil and oil
19 sludge, paint waste, solvents, and tank bottom sediments. These hazardous wastes include known
20 and suspected carcinogens and mutagens that can affect the central nervous system and damage
21 internal organs at low levels if exposure occurs at certain concentration levels and over a certain
22 period of time.

23 The BKK Class I Landfill has no liner system, which means that waste was disposed
24 directly onto the ground, with no barrier between the waste and the native rock. The bedrock is
25 fractured, folded, and faulted, and provides multiple pathways for contaminants to migrate
26 downward and outward beyond the limits of the landfill. Because of these disposal practices,
27 contaminants seeped into the bedrock below the BKK Class I Landfill, and have migrated to
28 groundwater. Volatile organic compounds ("VOCs") have also been detected in soil gas at the

1 BKK Class I Landfill and in ambient air at or near the landfill. In 1984, methane and vinyl
2 chloride were detected in ambient air at concentrations that warranted the evacuation of nearby
3 residences.

4 In October 2004, BKK Corporation stated that it could not continue to conduct post-closure
5 care as it was required by law for the BKK Class I Landfill after November 17, 2004. Thereafter,
6 DTSC engaged a contractor to conduct emergency response activities and to operate and maintain
7 the critical equipment and systems on a daily basis.

8 In December 2004, pursuant to its regulatory authority, DTSC issued an "Imminent and
9 Substantial Endangerment Determination and Order and Remedial Action Order" ("ISE Order")
10 to BKK Corporation and 50 other respondents who were alleged to be potentially responsible for
11 conditions at the BKK Site. The ISE Order required the respondents to conduct operation and
12 maintenance activities at the BKK Class I Landfill and the leachate treatment plant. Debtor was
13 not a respondent in that order.

14 In 2005, a group of twenty-six entities, most of whom had been respondents to the ISE
15 Order, joined together as the "BKK Working Group" and began reimbursing DTSC for a portion
16 of its response costs. In March 2006, the United States District Court for the Central District of
17 California entered a Consent Decree between DTSC and the BKK Working Group. The March
18 2006 Consent Decree required the BKK Working Group to perform certain projects and
19 operations at the BKK Class I Landfill and to pay for certain DTSC response costs. Debtor was
20 not a party to the Consent Decree.

21 Members of the BKK Working Group and DTSC are currently working on a successor
22 Consent Decree with a term of three years, requiring the BKK Working Group to conduct
23 additional response activities at the BKK Class I Landfill. DTSC may conduct or compel other
24 additional response actions as well, including actions to address groundwater contamination.

25 The BKK Site is still undergoing investigation, and the full extent of the contamination and
26 associated cleanup costs is not currently known. Based upon DTSC's current knowledge of the
27 BKK Site, the nature of the hazardous substances released, and other available information,
28 DTSC estimates that the costs of the environmental response actions necessary at the Site will be

1 in excess of \$600,000,000. However, since the investigation at the BKK Site is continuing, and
2 the full extent of the contamination not yet finally determined, the estimated cleanup costs may
3 vary.

4 DTSC has determined that "Uniroyal Co.," doing business in Commerce, California, sent
5 hazardous waste or other hazardous substances to the BKK Site for disposal. Under CERCLA
6 and the HSAA, Debtor is therefore among the potentially responsible parties ("PRPs") at the
7 BKK Site. DTSC presently has insufficient information regarding Debtor's liability to present an
8 estimate of DTSC's claim against Debtor concerning the Site. Therefore, DTSC's claim against
9 Debtor as to the Site is for an unliquidated amount. DTSC expressly reserves its right to amend
10 this proof of claim when additional information about the Site becomes available.

11 **IV. DOCUMENTS SUPPORTING THIS PROOF OF CLAIM**

12 The documents supporting this proof of claim are voluminous. Documents pertinent to the
13 Site are available on DTSC's website at www.dtsc.ca.gov at the "EnviroStor" link, which is
14 searchable by site name and city location.

15 DTSC summarizes additional supporting documents as follows. Copies of these documents
16 can be requested by contacting the undersigned.

17 **1. DTSC's ISE Order and March 2006 Consent Decree for the Site**

18 These orders summarize the Site's history and environmental conditions as of the time of
19 their entry, and outline the legal obligations of the named respondents/defendants to perform or
20 fund certain environmental work at the Site.

21 **2. Hazardous Waste Manifests of "Uniroyal Co." for the Site**

22 These manifests reflect that "Uniroyal Co.," doing business in Commerce, California, sent
23 hazardous wastes or hazardous substances to the Site for disposal.

24 **3. DTSC's Summary by Activity Reports for the Site**

25 These reports summarize DTSC's oversight work to date at the BKK Site.

26 **4. DTSC's Site File for the BKK Site**

27 This file contains additional information regarding the necessary cleanup of the Site and
28 attendant costs.

1 **V. CONTINGENT, UNCERTAIN, OR UNKNOWN CLAIMS**

2 DTSC is informed and believes that Debtor may also be a liable party at an unknown
3 number of yet to be identified sites. DTSC reserves the right to assert claims against Debtor
4 under CERCLA and/or California law for response costs at other facilities where Debtor is
5 identified as a potentially responsible party. *See, e.g., In re Jensen*, 995 F.2d 925, 931 (9th Cir.
6 1993); *In re Chateaugay Corp.*, 944 F.2d 997, 1005 (2nd Cir. 1991). Accordingly, DTSC
7 reserves the right to assert presently unidentified claims for response costs that DTSC has
8 incurred, or will incur, at sites where there has been a release or threatened release of hazardous
9 substances, and where Debtor may be a responsible party.

10 **VI. NOTICES**

11 All notices should be sent to the undersigned at the following address:

12 Thomas G. Heller, Deputy Attorney General
13 California Department of Justice
14 300 S. Spring Street, Suite 1702
15 Los Angeles, CA 90013

16 Dated: October 30, 2009

17 Respectfully submitted,

18 EDMUND G. BROWN JR.
19 Attorney General of California
20 MARGARITA PADILLA
21 Supervising Deputy Attorney General

22 

23 THOMAS G. HELLER
24 Deputy Attorney General
25 *Attorneys for the California Department of*
26 *Toxic Substances Control*

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